IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 153.

HOPE BASKET COMPANY, A CORPORATION, WALTER VERHALEN, R. A. DENNISON, AND WALTER VERHALEN, II, DOING BUSINESS AS WALTER VERHALEN COMPANY, A PARTNERSHIP,

Petitioners,

vs.

PRODUCT ADVANCEMENT CORPORATION AND ST. JOE MACHINES, INC.,

Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The Petition for a Writ of Certiorari should be denied because:

(a) The case involves merely a determination of rights under patent licenses and patents which have now expired;
(b) The factual situation embraced herein is unique to this case only and will affect few others than the litigants;
(c) The case does not involve any of the important and

special reasons for granting a Writ of Certiorari as provided by the Rules of the Supreme Court of the United States (Rule 38, par. 5); (d) The case involves concurrent findings of fact by two courts below and should not be reviewed, as held in *Graver Tank & Mfg. Co., Inc.* v. *Linde Air Products Co.*, 336 U. S. 271; 69 S. Ct. 535.

OPINIONS BELOW.

The opinion of the District Court (R. 198) is reported at 89 F. Supp. 116. The opinion of the United States Court of Appeals for the Sixth Circuit (R. 288) is reported at 187 F. 2d 1008.

JURISDICTION.

The jurisdictional requisites based on the Judicial Code are adequately set forth in the Petition, but Respondents deny that Rule 38(5)(b) of this Court contains any matter applicable to this case on which jurisdiction can be based.

QUESTIONS PRESENTED.

The questions which Petitioners have presented (Pet. p. 8) are couched in language too broad and misleading to be answered categorically. Respondents, therefore, present herewith what they deem to be a more correct and complete statement of these questions as follows:

1. Whether licensees, under a Machine and Method Patent for making baskets, must pay royalties after the expiration of that patent for the right to continue to make baskets covered by another and unexpired patent of the licensor, where the two patents embrace two distinct inventive concepts, and where the licensees have agreed in writing that they will pay those royalties.

2. Whether a later issued patent on a basket is invalid for extension of the monopoly created by an earlier issued patent on a machine and method for making baskets, where the machine is capable of making other than the patented basket and the patented basket can be made on other machines.

STATEMENT.

In order to supply omissions and to correct any inaccuracies in the statement of the case as set out by the Petitioners, the Respondents herein present their own Statement.

The five license agreements or Attachment Licenses executed April 1, 1930, referred to on page 2 of the Petition, each contains a provision whereby Petitioners admit the validity for the full terms expressed in the grants thereof of all the patents covered by the license. Petitioners further agreed to the understanding that the license covered all patents issued to the licensor after April 1, 1930 "on the subject matter of these patents" (R. 251). Respondents successfully urged in both courts below that, because of this provision in each license agreement, the Schmidtke Basket Patent No. 1,895,586 (R. 252A) was included in the license (R. 223, 291), and Petitioners were, therefore, not free to contest the validity of that Basket Patent (R. 224, 292).

In addition to these five standard licenses, Petitioners agreed with Respondents, by means of a Supplemental Agreement (R. 272) executed in 1940 (R. 37), that the patents licensed in the license agreements cover all baskets of a description clearly defining the basket of the Basket Patent No. 1,895,586 and agreed to pay royalties on baskets of that description *regardless of the method of manufacture used.*

Of the fifty licensees of Respondents (R. 277-278), only eight ceased paying the royalties due in the fall of 1947 and one ceased paying in the fall of 1948 (R. 281). The

remaining forty-one licensees continued their royalty payments until January 31, 1950, the expiration date of the Basket Patent.

In order to solve the problem of sleaziness and the bulging condition of the bottom of the common round bottom, two hoop basket, Schmidtke, after considerable experimenting, discovered first that a great improvement resulted when he continued the side wall of the basket in a straight line from the top to the bottom and then applied a third outside hoop at the juncture of the side wall and the bottom (R. 60). Thereafter, Schmidtke discovered that "if the bottom could be placed under a certain definite tension, the basket would sustain considerably more weight when piled one on the other" (R. 60). The next step in completing the invention of the basket was the discovery "that by arching the entire bottom upward toward the open end or top of the basket and applying the outside band around the bottom of the basket to hold this arching effect in the bottom, placed the desired tension, or strain, at this point, causing the basket to be very rigid" (R. 60).

After first designing this new type of basket Schmidtke then set about to design the machine or equipment necessary to make such a basket (R. 60).

The original Schmidtke application filed March 25, 1926 contained claims on the machine and method for making baskets as well as claims on the basket itself. The Patent Office then required division as between the machine and method claims on the one hand, and the claims to the basket on the other, on the basis that these two groups of claims represented two distinct and independent inventions. On January 3, 1928, Schmidtke cancelled the claims to the basket and almost immediately thereafter, on February 20, 1928, he filed the divisional application on the basket which was then co-pending with the parent

application. The Machine and Method Patent No. 1,752,856 thereafter issued on April 1, 1930 and the Basket Patent No. 1,895,586 issued on January 31, 1933.

Petitioners paid royalties for the use of the patented machine and attachments from April 1, 1930 to April 1, 1947 at which time the Machine and Method Patent expired. When the Basket Patent issued on January 31, 1933, the licensees were given the additional benefit of this patent without any increase in royalties (R. 274). At the time the Machine and Method Patent expired in 1947 Petitioners had paid royalties for the privilege of making the patented basket for only fourteen years. Respondents' position that Petitioners should pay royalties for the continued manufacture of baskets covered by the Basket Patent, in accordance with the main license agreement and with the Supplemental Agreement of 1940, regardless of the machines or methods used to make such baskets, has been upheld by both courts below (R. 224, 297).

Both courts below upheld Respondents' contention that the machine of the expired Machine and Method Patent No. 1,752,856 can be used to make a basket not within the scope of the Basket Patent (R. 217, 294). For example, if the machine is used without feeding a third hoop, the result would be a two-hoop basket not covered by the Basket Patent. If all three hoops are fed into the machine but the bottom hoop does not have the function of maintaining the basket bottom in its arched condition, such a basket does not infringe the Basket Patent. If the bottom hoop is located a distance upwardly from the basket bottom such that it will not retain the bottom arched, then a non-infringing basket also results.

In accordance with the agreements, however, and as the courts below found, Petitioners must pay royalties for making baskets within the scope of the Basket Patent whether those baskets are made by hand, or by machines

of the Dudley Patent No. 1,751,728 (R. 252B), the Craig Patent No. 1,757,294 (R. 252C), or the expired Schmidtke Patent No. 1,752,856 (R. 244).

In requiring division as between the method and apparatus claims and those claims directed to the basket *per se*, the Patent Office held that there were two separate and distinct inventions rather than a unitary concept. The District Court below recognized the distinct and separate inventiveness as between the first conceived basket and later conceived machine (R. 217).

The Court of Appeals agreed with this view of the District Court in recognizing that the machine of the Schmidtke Machine and Method Patent can make baskets which are different from those specified in the Basket Patent and that the patented baskets can be made by machines other than that disclosed in the Machine and Method Patent (R. 294).

Both courts below recognized the principle underlying the doctrine of undue extension of the patent monopoly as originally stated by this Court in *Miller* v. *Eagle Mfg. Co.*, 151 U. S. 186, and as later applied in *Wirebounds Patents Co.* v. *Saranac Automatic Machine Corp.*, 37 F. 2d 830 (R. 217, 293). Both courts rejected the doctrine as not applicable here due to the distinct and completely different inventive concepts involved as between the Machine Patent and the Basket Patent.

In any event, the Basket Patent has been involved in much litigation and has *always been held valid.* See *Straight Side Basket Corporation and St. Joe Machines, Inc.* v. *Kull, et al. d/b/a Two States Fruit Package Company*, 24 F. Supp. 771; *Straight Side Basket Corporation and St. Joe Machines, Inc.* v. *The Marshall Manufacturing Company*, (unreported but appearing R. 225); *Straight Side Basket Corporation and St. Joseph Iron Works* v. *Zapf Fruit Package Company*, 26 F. Supp. 90, affirmed 99 F. 2d 1015 (6 Cir.).

ARGUMENT.

REASONS FOR DENYING THE WRIT.

No Public Interest Involved.

There is no such public interest involved in this case as to warrant consideration by this Court. Petitioners have urged (Pet. Br. pp. 8, 12) as one of the reasons for granting the Writ that Respondents have claimed some fifty licensees in eighteen states of the United States and that this, therefore, represents a large public interest. Actually, there were only nine of those fifty licensees who refused to continue to pay royalties until the expiration of the Basket Patent (R. 281). It cannot seriously be urged that the interests of nine licensees are those of a large proportion of the public. This is particularly true under the circumstances of this case where (a) all of these licensees admittedly have entered into substantially the same license agreements; (b) both courts below have concurred in determining that the licensees are bound to pay royalties to the expiration date of the Basket Patent in return for the right to make baskets covered by that patent; and (c) both courts below, as well as the courts in three other cases, have all concurred in upholding the validity of the Basket Patent. It is, therefore, the present litigants and eight other licensees, rather than the public generally, who have an interest in the outcome of this case.

Petitioners have injected into their argument (Br. p. 12) a brief mention relative to misuse of the Patent Laws. They cannot be serious in urging this, however, since there is no evidence of any such misuse in the record and nothing to support or justify such a statement. In fact, other than charging extension of the patent monopoly, Petitioners have not expanded on any theory of misuse in their brief.

The Improbability of Litigation in Other Circuits Does Not Exist.

Petitioners urge as a further reason for granting the Writ (Pet. Br. pp. 9, 12) that litigation in other circuits is improbable and rely upon *Schriber-Schroth Co.* v. *Cleveland Trust Co.*, 305 U. S. 47, and *Muncie Gear Works* v. *Outboard Marine & Mfg. Co.*, 315 U. S. 759.

The basis for their contention is that any *declaratory judgment action* which might be brought by any of the other licensees against these Respondents must be brought in the Sixth Circuit where Respondents reside. There are only eight licensees other than Petitioners who might possibly consider such action and they have all contributed to the present litigation financially. It is unlikely that any one of those licensees would bring another declaratory judgment action on behalf of itself. On the contrary, however, the eight remaining licensees who have refused to pay royalties reside in three different states, namely, Kentucky, Arkansas and Texas (R. 281). Arkansas is in the Eighth Circuit and Texas is in the Fifth Circuit. There is a greater probability that the Respondents here may find it necessary to bring suit against those other eight licensees in order to collect royalties due in which event the questions presented here would then arise in the Fifth and Eighth Circuits. There is a far greater probability of this than of any one of the other licensees bringing a declaratory judgment action in the Sixth Circuit.

Furthermore, in the later *Muncie Gear* case, 315 U. S. 759, relied upon by Petitioners, this Court granted certiorari not *solely* because litigation in other circuits was unlikely, but also "in view of the questions presented."

There is, therefore, no such improbability of litigation in other circuits as to warrant consideration of this case by this Court, and in any event that reason, standing alone, is insufficient to warrant the granting of the Petition.

No Conflict With Decisions of This Court.

Petitioners urge that the decision of the Court of Appeals for the Sixth Circuit in this case on the question of extension of the patent monopoly is not in accord with the decisions of this Court in *Saranac Automatic Machine Corporation* v. *Wirebounds Patents Company, et al.*, 282 U. S. 704, and *Miller* v. *Eagle Mfg. Co.*, 151 U. S. 186. The basis for the decisions in those earlier Supreme Court cases was that there was but a single and unitary concept which could be covered by only one patent. In the present instance, Respondents have argued, the evidence shows, and both courts below held, that there were two distinct concepts: The one relating to the basket, which came first, and the one relating to the machine and method, which came later.

The facts in the two foregoing Supreme Court cases are so totally different from the facts here that the cases are clearly distinguishable and, therefore, can be neither in conflict nor in accord.

There is no justification for Petitioners' statement (Br. p. 13) that the inventor "took and stated the position that he had only one invention" by filing only one application containing claims directed to the machine, method and product. It is, of course, a universal practice to include claims directed to more than one invention in an original application even though the applicant may expect a later requirement for division. In addition to this, however, there is no objection to the inclusion, in a single application, of claims directed to more than one invention in certain instances. This is well settled law as originally stated by this Court in *Steinmetz* v. *Allen*, 192 U. S. 543.

In any event each claim of a patent represents a complete and independent invention. This is also a universally

accepted rule of law as stated by this Court in *Leeds & Catlin Company* v. *Victor Talking Machine Co.*, 213 U. S. 301. This rule has been followed in such later cases as *XXth Century Heating and Ventilating Co.* v. *Taplin, Rice-Clerkin Co.*, 181 Fed. 96 (6 Cir.); *Railroad Supply Co.* v. *Hart Steel Co.*, 222 Fed. 261 (7 Cir.); *Veneer Machinery Co.* v. *Grand Rapids Chair Co.*, 227 Fed. 419 (6 Cir.); *General Motors Corporation* v. *Swan Carburetor Co.*, 88 F. 2d 876 (6 Cir.). It is, therefore, more than clear that filing claims directed to a machine, method and product in a single application *does not in any way indicate that the inventor believes himself to have made but one invention or a unitary concept.*

The Patent Office recognized that the claims directed to the basket were so completely independent from the invention as represented by the claims on the machine and method that they should not remain in the same application and, therefore, required the inventor to divide out of the original application the claims directed to one or the other invention. Even though the applicant, Schmidtke, may not have been *obliged* to accept the ruling of the Patent Office in this requirement for division, as stated in *Remington Rand Business Service, Inc.* v. *Acme Card System Co.*, 71 F. 2d 628, (Br. p. 13), it is equally true that the applicant was not *obliged* to take the additional time and incur the additional expense of appealing this requirement. The more logical rule was stated in the later case of *National Tube Co.* v. *Steel & Tubes, Inc.*, 90 F. 2d 52 (3 Cir.), where the court held that an applicant could not justly be blamed for acquiescing in a command by lawful authority and that the general rules regarding division must be left to the discretion of the Patent Office.

Petitioners have also sought to misinterpret the opening statement of Respondents' counsel in the trial court as urging that the machine and basket was a unitary develop-

ment (Br. p. 14). Respondents' counsel merely posed the question:

> "Was the basket invented before the machine, or was the machine the result of the basket?"

The subsequent testimony of the inventor, Schmidtke, answered this question and brought out clearly beyond any reasonable doubt that *he first designed the basket and thereafter, as an independent concept, designed a machine which would produce that basket* (R. 60). This was the evidence upon which the courts below based their holdings that this was not an instance of a unitary concept, but rather was a clear indication of separate and distinct inventions. Indeed, the question would never have arisen if a person other than the inventor of the basket had designed the machine for making the basket.

Having thus established that the patent on the basket represents a distinct and separate invention from the patent on the machine and method for making that basket, this case immediately falls outside the scope of the decision of this Court in *Saranac Automatic Machine Corporation* v. *Wirebounds Patents Company, et al.*, 282 U. S. 704, and *Miller* v. *Eagle Mfg. Co.*, 151 U. S. 186. The dicta in that *Wirebounds* case was interpreted by the Court of Appeals for the Sixth Circuit in the later case of *Wirebounds Patents Co., et al.* v. *Saranac Automatic Machine Corporation*, 65 F. 2d 904.

This Court has never overruled the universally accepted doctrine that *the only instances of undue extension of the patent monopoly occur where there is double patenting or where a single inventive concept is claimed in two different patents.* The Court of Appeals for the Sixth Circuit gave a complete dissertation on this point in *Wirebounds Patents Co., et al.* v. *Saranac Automatic Machine Corporation*, 37 F. 2d 830. It was there held that if the claims of a

later issued patent were co-extensive with and covered the same invention as the claims of an earlier issued patent, then there was double patenting and an attempted extension of the monopoly granted by the earlier patent which would render the later patent invalid. This ruling was not upset by this Court in *Saranac Automatic Machine Corporation* v. *Wirebounds Patents Company, et al.*, 282 U. S. 704, where this Court said that it was not a question of double patenting or of the overlapping of specific and generic patents, but rather involved a question of invention. Since this Court construed the patent on the apparatus for making boxes as one which did not involve invention, the ruling of the court below was reversed without considering the question of double patenting.

In its general discussion of the facts of that *Wirebounds* case this Court observed that the original patent on the product disclosed the method of making it and that claims to the method were not presented to the Patent Office until after a delay of about seven years.

The Court of Appeals for the Sixth Circuit in the later case of *Wirebounds Patents Co., et al.* v. *Saranac Automatic Machine Corporation,* 65 F. 2d 904, construed that dicta of this Court to mean that the product of the original patent and the method of the later patent which was disclosed in the first patent represented but a single unitary concept and, therefore, only one invention. Since an inventor is entitled to only one patent for one invention, he could not cover the same invention by claims in a later patent directed to a different embodiment thereof.

This is not new law since it was recognized by this Court in the earlier case of *Miller* v. *Eagle Mfg. Co.*, 151 U. S. 186. In this latter case there was also but one invention which the inventor had attempted to cover by two patents. The present case is not in conflict with the *Wirebounds* cases and the *Miller* v. *Eagle* case since here the patent on

the machine represents one invention and the patent on the basket covers a separate and completely different invention, rather than a different embodiment of the same invention.

The Decisions Below Are Clearly Correct.

The decisions of both courts below on the question of extension of the patent monopoly were based on the recognition that the Schmidtke Basket Patent No. 1,895,586 covered an invention entirely separate and distinct from the invention covered by the Schmidtke Machine and Method Patent No. 1,752,856. There can be no extension of the patent monopoly where there is no double patenting and where the two patents in question represent completely different inventive concepts. This is in accord with other decisions in other circuits relating to the same question and the rule has never been upset or overruled by this Court.

The Court of Appeals for the Sixth Circuit in *Wirebounds Patents Co., et al.* v. *Saranac Automatic Machine Corporation,* 37 F. 2d 830, held this to be the universally accepted doctrine and the doctrine was not overruled by this Court in *Saranac Automatic Machine Corporation* v. *Wirebounds Patents Company, et al.,* 282 U. S. 704.

The ruling on this point by the two courts below is in accord with the earlier case (1897) of *Thomson-Houston Electric Co.* v. *Ohio Brass Co., et al.,* 80 Fed. 712 (6 Cir.).

The law expounded in that *Thomson-Houston* case was cited with approval in *Traitel Marble Co.* v. *U. T. Hungerford Brass & Copper Co.* decided by the Court of Appeals for the Second Circuit, 22 F. 2d 259.

To the same effect was the holding by the Court of Appeals for the Fourth Circuit in *Montgomery Ward & Co., Inc.* v. *Gibbs,* 27 F. 2d 466.

The doctrine dealing with the so-called extension of the

patent monopoly is by now well settled as is evidenced by the various decisions cited above in the different courts of appeals. The two courts below in the present case merely followed these well recognized principles that where a later patent covers an invention completely different from the invention of an earlier patent, there is no extension of the monopoly granted by the earlier patent. The doctrine in these various cases is no different from that set out in ***Miller*** v. ***Eagle Mfg. Co.,*** 151 U. S. 186, and in *Wirebounds Patents Co., et al.* v. *Saranac Automatic Machine Corporation,* 65 F. 2d 904. The holding in those cases that the later issued patent was invalid was based on the finding that there was but a single inventive concept which the inventor was attempting to cover by having different patents issue on different embodiments of that same concept. The decision of the Court of Appeals in the present case, affirming the decision of the trial court on this point, is therefore clearly correct.

That the two courts below were correct in holding the Basket Patent valid is further evidenced by the fact that such holding is in accord with all other decisions involving that patent in other courts, such as ***Straight Side Basket Corporation and St. Joe Machines, Inc.*** v. ***Kull, et al. d/b/a Two States Fruit Package Company,*** 24 F. Supp. 771; ***Straight Side Basket Corporation and St. Joe Machines, Inc.*** v. ***The Marshall Manufacturing Company,*** (unreported but appearing R. 225); *Straight Side Basket Corporation and St. Joseph Iron Works* v. *Zapf Fruit Package Company,* 26 F. Supp. 90, affirmed 99 F. 2d 1015 (6 Cir.).

NO EXTENSION OF PATENT MONOPOLY.

The Schmidtke Basket Patent No. 1,895,586 is not an extension of the Schmidtke Machine and Method Patent No. 1,752,856 because the two patents cover two separate and distinct inventions and there is no double patenting.

Since the patent on the basket covers a different invention from the patent on the machine and method, then the concurring decisions of the courts below are not in conflict with any other decisions of this Court, and those decisions are correct.

For double patenting to be present the claims of the two patents in question must be co-extensive and cover substantially the same invention. The claims in the Basket Patent cover a particular type of basket. The claims of the Machine and Method Patent cover a machine and method for making a basket. The claims in the Basket Patent do not cover a machine and the claims in the Machine Patent do not cover a basket. Therefore, the claims in the two patents are not co-extensive and there is no double patenting.

The argument of Petitioners that the basket covered by the Basket Patent is the inevitable product resulting from the machine of the Machine and Method Patent and that the basket cannot be made except by using the machine covered by the Machine and Method Patent is fallacious in several respects and is contrary to the holdings of the courts below (R. 294).

The patent statutes require an applicant for a patent to disclose clearly the preferred form of his invention. This preferred form, however, need not be the only form. The machine disclosed in the Schmidtke Patent No. 1,752,856 was designed for making a particular type of basket, but that does not mean that other baskets cannot

be made on that same machine. For example, if the machine of that patent were to be operated without inserting a bottom hoop, a basket would be produced which is different from the basket covered by the Basket Patent. On the other hand, if the bottom hoop were to be applied at a height from the bottom of the basket where it would not have the function of maintaining the arch in the basket bottom, a still different type of basket would be produced which would not be covered by the claims of the Basket Patent. It is likewise true that if the apparatus of the Machine and Method Patent were to be used so that there was very little or no bulge in the basket bottom, or if the bottom hoop were to be applied so loosely that it would not retain the inward bulge, then a basket would be produced which would not be covered by the Basket Patent. It is thus quite evident that a basket other than that covered by the Basket Patent can be made by the apparatus disclosed in the Machine and Method Patent.

The basket of the Basket Patent can also be made either by hand or by apparatus other than that disclosed in the Machine and Method Patent. It is unnecessary to consider whether or not making the patented basket by hand would be commercially feasible. The first basket of this type made by Schmidtke was made by hand. Other machines for making this same basket are disclosed in the Dudley Patent No. 1,751,728 (R. 252B) and the Craig Patent No. 1,757,294 (R. 252C). Since the apparatus of the Machine and Method Patent can be used to make baskets which are different from that covered by the Basket Patent, and since the patented basket can be made by apparatus other than that covered by the Machine and Method Patent, there can be no extension of the patent monopoly.

Schmidtke's own testimony (R. 60) explained in great

detail how the basket itself was first invented. This testimony shows conclusively that the basket is an invention separate and distinct from the invention represented by the apparatus for making that basket. The rule is well settled that under these circumstances a later issued patent does not extend the monopoly of an earlier issued patent. *Thomson-Houston Electric Co.* v. *Ohio Brass Co.*, 80 Fed. 712 (6 Cir.); *Traitel Marble Co.* v. *U. T. Hungerford Brass & Copper Co.*, 22 F. 2d 259 (2 Cir.); *Montgomery Ward & Co., Inc.* v. *Gibbs*, 27 F. 2d 466 (4 Cir.); *Wirebounds Patents Co., et al.* v. *Saranac Automatic Machine Corporation*, 37 F. 2d 830.

ESTOPPEL TO CONTEST VALIDITY.

Petitioners here have presented questions relating only to the validity of the Basket Patent, alleging that it is an undue extension of the monopoly of the Machine and Method Patent. The two courts below concurred in holding that the Petitioners were estopped to deny the validity of the Basket Patent because of the agreements contained in the five Attachment Licenses and because this suit was brought while the licenses were still in effect. Since Petitioners have not asked this Court to consider the question of estoppel, it must be assumed that they have no quarrel with the lower courts' decisions on this point. This, then, puts the Petitioners in the position of asking this Court to consider a question which Petitioners themselves have admitted they have no right to raise. For this additional reason, this Court should not grant the Petition.

CONCURRENT FINDINGS OF FACT BY TWO COURTS ORDINARILY NOT REVIEWED.

A review by this Court on a Writ of Certiorari is not a matter of right, but rather is one of sound judicial discretion, as provided for by Rule 38(5) of the Rules of this Court. The present case presents none of the special and important reasons for granting a writ as set out in Rule 38(5)(b).

When such special and important reasons are not present, a denial of the Petition becomes even more compelling when the case involves concurrent findings of fact by two courts below.

The trial court's opinion (R. 198) indicates that careful thought and consideration was given to every finding of fact and point of law raised. The opinion of the Court of Appeals for the Sixth Circuit (R. 288) found all of the trial court's findings were clearly supported by the evidence and careful and independent thought was given in affirming the legal points, particularly the questions presented in the Petition. This Court has recently held in *Graver Tank & Mfg. Co., Inc.* v. *Linde Air Products Co.*, 336 U. S. 271, that concurrent findings by two courts below, such as there are here, will ordinarily not be reviewed by this Court. This Court there stated (p. 275):

> "A court of law, such as this Court is, rather than a court for correction of errors in fact finding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error."

CONCLUSION.

The questions presented by the Petition have no great public importance and because of the peculiar circumstances surrounding this case, the decision affects few others than the litigants. The concurrent findings of the two courts below are in complete accord with decisions involving similar questions in other United States Courts of Appeals and are not in conflict with any other decisions of this Court. It is, therefore, respectfully urged that the Petition be denied.

Respectfully submitted,

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